

ENTERED

January 02, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISIONNORTH AMERICAN BUTTERFLY
ASSOCIATION DBA NATIONAL
BUTTERFLY CENTER, *et al*,

Plaintiffs,

VS.

NEUHAUS & SONS, LLC, *et al*,

Defendants.

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CIVIL ACTION NO. 7:19-CV-00411

**ORDER STRIKING PLAINTIFFS' SECOND AMENDED COMPLAINT AND
APPLICATION FOR INJUNCTIVE RELIEF**

Plaintiffs filed their Original Petition and Application for Injunctive Relief (Dkt. No. 1, Ex. B) on December 3, 2019, in the 398th Judicial District Court of Hidalgo County, Texas. Dkt. No. 1. Defendant Neuhaus & Sons, LLC, removed the case to federal court on December 13, 2019. *Id.* In its Notice of Removal, Defendant Neuhaus & Sons, LLC, represented that Plaintiffs had filed a First Amended Petition and Application for Injunctive Relief ("Amended Petition") on December 13, 2019, in state court prior to removal, but that Defendant was unable to file the Amended Petition in federal court. Dkt. No. 1, Ex. B at 19.

The Court held a status conference on December 19, 2019. At the time, Plaintiffs' Amended Petition had not been filed in federal court by either Plaintiffs or Defendants. At the conference, the Court asked Plaintiffs to file their Amended Petition, their live pleading, with the Court. The following day, December 20, 2019, Defendant Neuhaus & Sons, LLC, filed Plaintiffs' Amended Petition, originally filed in state court on December 13, 2019, with the Court. Dkt. No. 9, Ex. B.


On December 23, 2019, Plaintiffs filed their Second Amended Complaint and

Application for Injunctive Relief (“Second Amended Complaint”), which they represent that they filed “at the direction of the Court as it requested at the December 19, 2019 hearing” Dkt. No. 11 at 1 n.1. While the causes of action alleged in both the Amended Petition and the Second Amended Complaint are identical, the two pleadings do have some substantive differences, such as the way in which Plaintiffs argue in support of their application for injunctive relief in each pleading. *Compare id.* at ¶¶ 27–34, with Dkt. No. 9, Ex. B at ¶¶ 29–37.

After a party has already amended its pleading once, a party may subsequently amend its pleading “only with the opposing party’s written consent or the court’s leave.” FED. R. CIV. P. 15(a)(2). As noted above, at the December 19, 2019 status conference, the Court requested that Plaintiffs file their Amended Petition in federal court, as the Court, at the time, did not have access to Plaintiffs’ live pleading. The Court did not grant Plaintiffs leave to amend their pleading. Further, Defendants have not provided their written consent to the filing of Plaintiffs’ Second Amended Complaint. *See* Dkt. No. 11.

Therefore, the Court hereby **STRIKES** Plaintiffs’ Second Amended Complaint and Application for Injunctive Relief (Dkt. No. 11) from the record. Should Plaintiffs wish to amend their pleading, they must either seek and obtain leave from the Court to do so or obtain written consent from Defendants pursuant to the Federal Rules of Civil Procedure Rule 15(a)(2).

SO ORDERED this 2nd day of January, 2020, at McAllen, Texas.



Randy Crane
United States District Judge